

October 9, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON CODE ENFORCEMENT APPEAL

SUBJECT: Department of Development and Environmental Services File No. **E9900729**

WADE AND SHEILA FARLEY
Code Enforcement Appeal

Location: 18215 East Spring Lake Drive Southeast

Appellants: **Wade and Sheila Farley**
18215 E. Spring Lake Dr
Renton, WA 98058
Telephone: (425) 432-2785

King County: Department of Development and Environmental Services,
Code Enforcement Section, *represented by*
Chris Tiffany
900 Oakesdale Avenue SW
Renton, WA 98055-1219
Telephone: (206) 296-7049
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	October 4, 2001
Hearing Closed:	October 4, 2001

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Class 3 stream
- Grading
- Filling
- Sensitive areas
- Stream buffer
- Wetland
- Wetland Buffer

SUMMARY:

Grants appeal from notice and order concerning stream buffer and wetland filling code enforcement citation.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On July 13, 2001 the Department of Development and Environmental Services (“DDES” or “Department”) served upon Wade and Sheila Farley (Appellants) a notice of King County Code violation; civil penalty order; abatement order; notice of lien; duty to notify (“notice and order”) regarding their property at 18215 East Spring Lake Drive Southeast in unincorporated King County.¹ The notice and order cites the Appellant for two violations of King County code
 - Filling in excess of 100 cubic yards and 3 feet in depth without a valid grading permit; and
 - Filling in a sensitive area buffer (stream) without a valid grading permit

KCC 20.82.060; KCC 21A.24.360 through --.380.

The notice and order commands the Appellants to apply for and obtain a valid grading permit and establishes deadlines and penalties for compliance enforcement.

2. **Appeal filed.** On July 23, 2001, the Appellants filed timely appeal, arguing that the action taken was corrective due to erosion; that the drainage course at issue is not a stream; that “few yards of dirt were used”; and that restoration has been completed by both introduced and natural vegetation. Finally, the Appellants argue that the drainage problems they experience should be remedied by King County.
3. **Relevant findings.** The following findings are relevant to this review:

¹ Tax assessor’s lot no. 793760-0510; lot no. 100 of Spring Lake Addition and adjacent shorelands.

- a. The fill at issue is located in two areas. One is located near East Spring Lake Drive Southeast right-of-way. The other deposition occurred in the central portion of the subject property, approximately 350 feet west from East Spring Lake Drive Southeast. The interior fill is associated with the stream buffer citation; the other, with the wetland citation.
 - b. The Department alleges that the Appellants placed fill in the interior portion of the property (near the Farley home) within 25 feet from an ephemeral or intermittent or seasonal stream²—thus, within the class 3 stream buffer area. The Appellants counter that the fill is located at least 30 feet from the stream. *Neither party took measurements.*
 - c. Regarding the fill placed in the vicinity of the class 3 stream, the Department states that the fill exceeds three feet in depth. The Appellants disagree, arguing that it is only two feet deep. *Measurements were not taken by either party.*
 - d. The fill located to the front of the Farley property, near Spring Lake Drive, may or may not have been placed within a wetland or wetland buffer. Photographs in evidence indicate that some wetlands do exist within the eastern portion of the Farley property. *However, the hearing record contains no clear evidence regarding the location of the fill at issue with respect to wetland or wetland buffer boundaries.*
 - e. The Department contends that the Appellants imported and deposited over 100 cubic yards of fill material on the property. The Appellants responds, based on the number of truckloads deposited, that the amount of fill fell more in the 20-40 cubic yard range (depending on how full the trucks were). *Neither party offered precise documentation or calculations regarding cubic yardage.*
4. **Chronology.** The chronology of events contained in the Department's report and recommendation (exhibit no. 1) is accurate and—for that purpose only—adopted and incorporated here.

CONCLUSIONS:

The Department must establish a *prima facie* case. That is, the Department must present a case which, at first sight (before closer inspection) may be construed as legitimate. The Department has failed to do that in this case. The cubic yardage figures of the Appellant and Department differ, yet neither party provided documentation or reasoned calculation as to the actual amount. The guesstimates regarding landfill placement within proximity of the class 3 stream differ between the Appellants and the Department, yet neither party provides useful measurement to resolve the disagreement. Likewise, the record contains no accurate or useful measurements or indications as to the proximity of the fill along Spring Lake Drive with respect to wetlands located on that portion of the Farley property. In a word, the Department has failed to establish a *prima facie* case.

² Designated a “class 3 stream” pursuant to standards contained in KCC 21A.24.360.A.

DECISION:

The appeal is GRANTED.

ORDER:

The notice and order of July 13, 2001, is null. No civil penalties have accrued.

ORDERED this 9th day of October, 2001.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 9th day of October, 2001, by certified mailing to the following parties:

Wade & Sheila Farley
18215 E. Spring Lake Dr.
Renton WA 98058

TRANSMITTED this 9th day of October, 2001, to the parties and interested persons of record:

Wade & Sheila Farley
18215 E. Spring Lake Dr.
Renton WA 98058

Roger Bruckshen
DDES/BSD
Code Enforcement Section
MS OAK-DE-0100

Randy Sandin
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Heather Staines
DDES/BSD
Code Enforcement-Finance
MS OAK-DE-0100

Chris Tiffany
DDES/LUSD
Site Development Services
OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE OCTOBER 4, 2001 PUBLIC HEARING ON KING COUNTY DEPARTMENT OF
TRANSPORTATION ROAD SERVICES DIVISION FILE NO E9900729

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Chris Tiffany. Wade and Sheila Farley represented themselves.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES report to the Hearing Examiner
- Exhibit No. 2 June 21, 1999; Complaint information filed with DDES Code Enforcement Section
- Exhibit No. 3 June 29, 2001; Photographs of filled areas on subject property
- Exhibit No. 4 October 25, 1999; Site map showing filled areas and photo points
- Exhibit No. 5 October 26, 1999; Warning letter
- Exhibit No. 6 July 13, 2001; Notice and Order
- Exhibit No. 7 July 23, 2001; Appeal of the Notice and Order
- Exhibit No. 8 August 31, 2001; Notice of hearing
- Exhibit No. 9 Site vicinity map
- Exhibit No. 10 Copy of Kroll map of site
- Exhibit No. 11 DDES Geographic Information System 1996 aerial photograph of the site
- Exhibit No. 12 Case file notes
- Exhibit No. 13 DDES Witness List
- Exhibit No. 14 October 3, 2001; Photos taken by the Farleys
- Exhibit No. 15 Photo taken by the Farleys